

MAR 15 1943

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942

No. 779

NICHOLAS J. CURTIS,

Petitioner,

vs.

UTAH FUEL COMPANY, a corporation, *et al.*,

Respondents.

BRIEF OF RESPONDENTS, UTAH FUEL COMPANY, *ET AL.*, IN OPPOSITION TO PETITION OF NICHOLAS J. CURTIS FOR WRIT OF CERTIORARI

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March 12, 1943.



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Questions Involved

1. Is the petition defective in being abortive and violative of the laws of the United States and the Rules of this Court?

2. On the merits, did the Circuit Court of Appeals act properly in affirming the action of the District Court in granting the motion to strike counts Twenty-three and Twenty-four of the complaint?

3. On the merits, did the Circuit Court of Appeals act properly in affirming the action of the District Court in

granting the motion to quash the service of summons on Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Mabey and William D. Sutton?

4. On the merits, did the Circuit Court of Appeals act properly in affirming the action of the District Court in refusing to substitute Bamberger Coal Company in the place and stead of Simon Bamberger, deceased, and further in refusing to enter a default judgment against the Bamberger Coal Company?

Counter Statement

Respondents respectfully request the denial of a Writ of Certiorari in this cause upon the following grounds:

1. The petition is abortive in that no final decree has been entered by the Circuit Court of Appeals for the Third Circuit. (28 U. S. C. A., Sec. 347; *Hamilton-Brown Shoe Co.* v. *Wolf Brothers & Co,* 240 U. S. 251.)

2. The Rules of this Court, and particularly Rule 38, Subdivision 5(a), (b) and (c), afford no proper basis for the petition.

3. The petition in form and contents violates the provisions of Rule 38, Subdivision 2, of this Court.

4. The petitioner has failed to serve counsel for the respondents with a notice of the filing of the petition, as required by Rule 38, Subdivision 3, of this Court.

5. An examination of the record served upon respondents does not disclose a copy of the original complaint.

Respondents therefore quote counts Twenty-three and Twenty-four of the Complaint, with the suggestion that a mere reading of these counts will reveal sufficient basis for the action of the District Court as affirmed by the Circuit Court of Appeals:

"TWENTY-THIRD COUNT.

Paragraph Forty: For the 23rd Count the plaintiff alleges and says:

To further carry out and consummate the object of the conspiracy charged in paragraph 12 of this complaint, and as a part thereof, in the month of November, 1937, in the City of Trenton, and State of New Jersey, the defendant Utah Fuel Company, its officers and agents, each with the knowledge of the object of the conspiracies theretofore conceived, waged and carried on by them entered into a certain agreement, contract or conspiracy with the law firm of Minton & Rogers, and especially with H. Collin Minton, Jr., whose law offices are located at the Trenton Trust Bldg., in the City of Trenton and State of New Jersey, to unduly, corruptly, wilfully, deliberately and maliciously renew, reopen and repeat; and cause the same to be renewed, reopened and repeated, the false, wanton and malicious prosecutions and false, malicious and martyric imprisonment as it set out and alleged above in this complaint so made against the life, liberty and property of the plaintiff."

"TWENTY-FOURTH COUNT.

Paragraph Forty-one: For the 24th Count the plaintiff alleges and says:

In further pursuance of the said agreement, contract or conspiracy charged in the above Count 23rd hereof, and as a part thereof the said H. Collin Minton, Jr., of the said law firm of Minton & Rogers, on or about the 11th day of December, 1937, in the City

of Trenton, State of New Jersey, in the court room of the United States District Court for the District of New Jersey, before the Honorable Phillip Forman, United States District Judge, sitting as a court for the hearing of motions, at the opening of its, Utah Fuel Company's, motion to dismiss the first complaint in this court against it, did, wilfully, deliberately, wantonly and fraudulently whispered to the Court and renewed, re-repeated and restated the following charges, to wit:

> We hold that he is not well yet; you can see him how he is sitting. He is not well yet but he practiced fraud and got out. The certificate he is holding is false because it was given to him to enable him to get back to his home but he refused to go after he got out. He is not well yet but we do not want to prosecute him at this time. He suffered enough. All we want at this time is to dismiss this suit and allow him to go on. He is rich, and they have business at Athens. We gave his brother treatment but he refused to take it and went and hired private doctors. And the like, and thereby prevented or hindered the said U. S. District Court from giving or securing to this plaintiff the equal protection of the laws; and the equal benefits of the laws and the proceedings so had before said Court; and deprived the plaintiff of the equal privileges and immunities under the laws."

6. Assuming that the bill of complaint or declaration be before this Court in conjunction with the petition, we respectfully refer the Court to the following excerpt from the opinion of the Supreme Court of Iowa in *Crabtree* v. *Steele,* 115 N. W. 593:

> "Having read the said petition, motions and demurrers, this Court is of the opinion that the bulk of said petition is a confused mass of allegations which bear no relation to each other. They are im-

> pertinent and irrelevant, scandalous in their nature, and the whole petition bears upon its face evidence that it was intended to villify and abuse the defendants, rather than a lawyer-like effort to set forth a legitimate cause of action."

Furthermore, in an opinion filed March 15, 1938, by the District Court of New Jersey in a cause between the same parties herein, which opinion was adopted by the Circuit Court of Appeals for the Third Circuit, it was stated:

> "The whole complaint is prolix, verbose and incoherent. Making all due allowance for the fact that the plaintiff is not a member of any bar (although he subscribes himself a bachelor of law) the document on its face fails to disclose any cause of action against the defendants herein."

7. The best answer to question 3 is found in the ruling of the District Court, which for convenience is herewith repeated:

> "Except as provided in Sections 113 to 118 of Title 28, U. S. C. A., no civil suit shall be brought in any district court against any person by any civil process or proceeding in any other district than that whereof he is an inhabitant, but where the jurisdiction is founded only on the fact that the action is between citizens of different states, suits shall be brought only in the district of the residence of either the plaintiff or the defendant.
>
> "The first provision has been violated because the plaintiff has attempted to bring the action in question in the district (New Jersey) where he says he resides, and the second provision has been violated because where jurisdiction rests on diverse state citizenship only, the suit instituted in the residence of the plaintiff can effect nothing unless he is able there to secure the service of process on the defendants.

"The motion is granted and service of summons on Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Maybe (Charles R. Mabey) and William D. Sutton is quashed."

8. With respect to the Bamberger Coal Company, the docket does not show that United States District Judge WALKER ever ruled upon the application to substitute Bamberger Coal Company in the place and stead of Simon Bamberger, deceased. The Appellate Court therefore had no jurisdiction.

Accordingly, we urge that the petition for Writ of Certiorari asked by petitioner be denied as unwarranted by the usages of this Court.

Respectfully submitted,

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Counsel for Utah Fuel Company, H. Collin Minton, Jr. and Bamberger Coal Company, appearing specially for Bamberger Coal Company.

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